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FEDERAL COMMUNICATIONS COMMISSION
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local	)	CC Docket No. 96-98
Competition Provisions in the	)	DOCKET FILE COPY ORIGINAL
Telecommunications Act of 1996	)	

BELLSOUTH OPPOSITION AND COMMENTS

BELLSOUTH CORPORATION
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BELLSOUTH TELECOMMUNICATIONS, INC.

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SUMMARY

Although BellSouth has filed an appeal of the Commission's First Report and Order ("Order") in this proceeding, BellSouth is vitally interested in numerous issues raised by the petitions for reconsideration. BellSouth generally supports the Consolidated Opposition being filed simultaneously herewith by the United States Telephone Association, but files this Opposition and Comments to emphasize certain matters as well as address issues which call for additional discussion.

First, BellSouth cautions the Commission not to further restrict the costing and pricing methodologies available to ILECs in establishing charges under Sections 251 and 252 of the Telecommunications Act of 1996 for interconnection and unbundled elements. The Commission has already overstepped the bounds of its lawful authority in the Order, and any further restrictions would fail under the same analysis.

Second, BellSouth supports the Commission's determination in the Order that ILECs are not required to make dark fiber available as an unbundled element. Not only have petitioners not provided adequate record support for their requests for such treatment, but dark fiber does not fall within the Act's definition of network elements which may be considered to be unbundled elements in the first place.

Third, BellSouth supports the Commission's determination in the Order not to require additional unbundling of AIN and database services. There are significant technical issues which must be resolved, including concerns impacting upon network reliability and security, and nothing offered by the petitioners should change the Commission's analysis.

Fourth, the Commission should reject requests to apply the resale-at-wholesale requirement to ILECs short-term promotions. This would likely limit the availability of such promotions and the benefits they provide to customers.

Fifth, BellSouth supports the request of the LECC for a deferral of the deadline by which nondiscriminatory access to Operations Support Systems must be made available. The rationale for the Commission's establishing the January 1, 1997 deadline was closely tied to the expectation that industry standards, which have failed to materialize, would be rapidly determined and a then-existing state commission deadline which has since been extended.

Sixth, BellSouth urges the Commission not to impose additional performance standards and reporting requirements. These are matters best left to private negotiations and state regulatory processes.

Seventh, BellSouth supports the request of the LECC that the Commission reconsider its requirement that ILECs must relinquish space properly reserved under the Commission's rules for BellSouth's own future use if a request for virtual collocation is received for which no space is available. This requirement severely impairs the ILECs' ability to reserve space for its own reasonable uses in order to serve the totality of its customers, while unfairly favoring such collocators.

Finally, BellSouth opposes NCTA's suggestion that the Commission impose additional and unnecessary separate certification procedures upon States as a precondition to state regulation over access to poles. The Commission should again reject, as it has already done in its Order, MCI's suggestion that, because facility modification may create excess capacity that could eventually become a source of revenue, utility owners must either use those revenues to compensate third parties who do not have an ownership interest in the facility, or price such modifications at average, incremental costs. BellSouth supports the petitions filed by the LECC and electric utilities with respect to access issues. The Commission should allow ILECs to reserve adequate capacity for their future use, and should modify its amended rule, Section 1.1403(c), to reflect its determination at paragraph 1209 that parties may negotiate the term of notice requirements for non-routine and non-emergency modifications to facilities.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)))	CC Docket No. 96-98

BELLSOUTH OPPOSITION AND COMMENTS

BellSouth Corporation, BellSouth Enterprises, Inc., and BellSouth Telecommunications, Inc. (hereinafter "BellSouth") hereby submit their Opposition and Comments regarding petitions for reconsideration and/or clarification of the Commission's First Report and Order ("Order")[1] in the above-captioned proceeding.

BellSouth participated actively in the proceedings leading up to the Order through formal comments as well as ex parte contacts at the Commission. BellSouth has a vital interest in assuring that the provisions of the Telecommunications Act of 1996 ("Act") are interpreted and applied in a fair, lawful and pro-competitive manner which enables speedy implementation of local exchange and exchange access competition pursuant to negotiated interconnection agreements. In many respects, the Commission, in the Order, overstepped its lawful authority by interfering with matters left by the Act to the negotiations process and to state regulatory authorities, and

[1] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers, Docket Nos. 96-98 and 95-185, First Report and Order, FCC 96-325 (August 8, 1996).

thus, BellSouth has appealed the Order.[2] Nevertheless, BellSouth has an interest in the Commission's resolution of the petitions requesting it to reconsider and/or clarify various aspects of the Order, and thereby submits these comments.

BellSouth herein addresses a variety of issues, many of which have been raised either by the Local Exchange Carrier Coalition ("LECC") in its Petition for Reconsideration and Clarification or are addressed in the Consolidated Opposition of the United States Telephone Association ("USTA"), which is being filed contemporaneously herewith and which BellSouth generally supports. Although BellSouth has not attempted an exhaustive discussion of each and every issue of concern, it has chosen to address those matters which bear further emphasis.

I. THE COMMISSION IS WITHOUT LAWFUL AUTHORITY TO IMPOSE ADDITIONAL COST AND PRICING REQUIREMENTS UNDER SECTIONS 251 AND 252.

The Commission must be cognizant of the fact that the Court of Appeals, in granting a stay of the pricing and "pick and choose" rules established by the Commission in the Order, determined that there was sufficient likelihood that the petitioners therein would succeed on the merits of their appeal that the Commission had exceeded its jurisdictional authority in promulgating such rules.[3] The Commission should not adopt the contentions of many of the petitioners to even further interfere with pricing/cost matters properly left to private negotiations

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[2] Bell Atlantic Corporation, BellSouth Corporation, and Pacific Telesis Group, Petition for Review, filed September 6, 1996, U.S. Court of Appeals, D.C. Cir. This appeal was later transferred to and consolidated with other appeals in the 8th Cir. U.S. Court of Appeals.

[3] Iowa Utilities Board, et al. v. F.C.C., Case Nos. 96-3321 et seq., Order (8th Cir., October 15, 1996). The particular rules adopted by the Commission which were stayed by the Court of Appeals are 47 C.F.R. Sections 51.501-51.515, 51.601-51.611, 51.701-51.717, 51.809 (as well as the proxy range for line ports established in the Commission's Order on Reconsideration, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, September 27, 1996).

and state regulatory authorities. Therefore, although BellSouth objects substantively to certain methodologies advocated by petitioners,[4] its greatest objection here is to the assumption of some petitioners that the Commission has authority to impose any cost or pricing methodology under Sections 251 or 252 of the Act in the first instance.

II. THE COMMISSION SHOULD NOT RECONSIDER ITS DETERMINATION THAT DARK FIBER IS NOT AN UNBUNDLED NETWORK ELEMENT.

The Commission correctly declined to require that dark fiber be provided as an unbundled service element.[5] The basis for this determination remains: the record evidence regarding dark fiber which the Commission found lacking, as described in the Order, is still lacking. More importantly, dark fiber is not within the ambit of those facilities which are eligible for mandatory unbundling because it is not "used in the provision of a telecommunications service" as required by the Act. Indeed, dark fiber inherently is unused. It is not a functioning part of the network, nor does it possess functionalities inherent to BellSouth's own network. Rather, it is a commodity which is available in the open marketplace from a variety of fiber suppliers. As such, the Commission could not, under the terms of the Act, require it to be provided as an unbundled element.

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[4] For instance, as BellSouth has demonstrated, the Hatfield Model is rife with incorrect inputs, assumptions, and logic. It systematically understates the cost of an idealized network that exists only in the imagination of its creators. A proper cost method would take into account an ILEC's actual costs, including its embedded costs, and the actual network deployed, not some hypothetical version. See BellSouth Reply Comments, filed in this proceeding on May 30, 1996, Attachment I, Harry M. Shooshan III and Ross M. Richardson, "Comments on Hatfield Study," May 30, 1996.

[5] Order at para. 450.

III. FURTHER UNBUNDLING OF AIN AND DATABASES SHOULD NOT BE REQUIRED AT THIS TIME.

In reviewing third party access to capabilities of the advanced intelligent network ("AIN"), the Commission adopted narrowly crafted rules reflecting a precarious balance between the advantages of introducing competition into the provision of AIN services and the disadvantages associated with increased performance and outage vulnerability for backbone networks. While BellSouth has repeatedly supported open interconnection of AIN networks as a long term goal, requirements beyond those contained in the Order would result in an environment where network risks significantly outweigh the benefits from increased interconnection opportunities. Thus, the Commission must deny MCI's request to require further unbundling of an ILEC's AIN capabilities.[6] Specifically, the Commission must reject MCI's proposal that ILECs support direct access to AIN switch triggers through interconnection of third party owned service control points (SCPs) over SS7 signaling links at this time.[7]

In pursuing reconsideration of the Commission's AIN interconnection requirements, MCI alludes to the Manhattan LNP trial as positive proof that open access to AIN components can be supported today. While that trial may prove that interconnection can be supported for a single application in a limited geographic area, it would be foolish to extrapolate such results into a general conclusion that interconnection of AIN elements can be supported on a broad basis. The test involved a single-service application, and the test environment dedicated significant multi-company and multi-discipline resources to that one service application. Furthermore, the test

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[6] MCI Petition at 24.

[7] In requesting reconsideration, MCI raises no new facts or questions, and the Commission has already reviewed MCI's arguments alluding to the feasibility of such interconnection. Order at para. 475.

environment limited testing of that application to a finite network architecture which may not approximate the network architecture utilized at any point within the country. To proceed with further mandated AIN interconnection on the basis of this trial would improperly assume that each proposed service application would be individually tested in every service architecture with the same type of dedicated resources which were applied to the LNP trial. The Commission was correct in its earlier interpretation that such an assumption could not be supported at this time.

Prior to establishing further requirements for AIN interconnection, the Commission must address the critical need for mediating such access. As the Commission properly determined, threats to network reliability and security must be properly evaluated in determining the "technical feasibility" of a requested interconnection arrangement.[8] While hollow claims to the contrary can be made, introduction of AIN technology into existing networks does introduce significant potential for negatively impacting network reliability and security. The real potential for network failure was specifically cited by the Network Reliability Council in its February 1996 Reports. Until such concerns can be properly addressed by inter-industry groups, the Commission is correct in deferring consideration of the proper forms of mediation required for AIN interconnection.

In addition to the broad access to AIN functionality which was requested by MCI, Pilgrim Telephone, Inc. ("Pilgrim") seeks additional access to call-related databases. Pilgrim specifically asks that "LECs should be required to place all network control, blocking and special billing information available to the local exchange company in LIDB or other commonly accessible databases."[9] Any such broad requirement would clearly violate the Commission's policy

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[8] Order at para. 203.

[9] Pilgrim at 5.

regarding customer proprietary network information. As noted in the Commission's policies, access to customer data must properly be limited to information necessary to provide specific services. The Commission is correct in allowing parties to negotiate between themselves how access to such data is provided. Therefore, the Commission must reject Pilgrim's request that access be mandated through specific application databases.

IV. THE COMMISSION SHOULD NOT FURTHER RESTRICT ILECS' ABILITY TO OFFER SERVICE PROMOTIONS FREE OF RESALE PRICING REQUIREMENTS.

The Commission should reject the contentions of some petitioners that the Commission should even further restrict the ability of ILECs to offer service promotions free of any resale pricing encumbrance. To apply the resale-at-wholesale pricing requirement to short-term promotions would likely eliminate the availability of such promotions and the benefits which they bring to consumers. In most instances, promotions are simply limited time waivers of nonrecurring charges. It would be illogical for ILECs to develop promotions to attract customers, only to be required to give a competitor the same limited time waiver for nonrecurring charges in addition to the already discounted wholesale monthly recurring rate, presumably, so that the competitor can, in turn, attract customers on the same basis as the LEC. This would amount to an ILEC subsidy of its competitors' marketing efforts, in effect, forcing ILECs to become technological and marketing "think-tanks" for competitors. The end result of such policy would be less innovation, thereby stifling competitive alternatives for consumers. Competitive advantage should be earned, not "awarded" through inappropriate discounts.

V. THE COMMISSION SHOULD DEFER THE DEADLINE FOR IMPLEMENTATION OF NONDISCRIMINATORY ACCESS TO OPERATIONS SUPPORT SYSTEMS.

BellSouth supports the request of the LECC for a deferral of the January 1, 1997 deadline for implementation of the requirements for nondiscriminatory access to ILECs' Operations Support Systems. In setting this early deadline in the first place, the Commission had the expectation that substantial and rapid progress would be made in the development of industry standards and relied upon the fact that the Georgia Public Service Commission ("GPSC") had set a July 1996 deadline for BellSouth to implement electronic interfaces for the same functions. However, industry standards have failed to materialize, and the GPSC has extended its original deadline.

While BellSouth has already made available many interfaces and will complete additional work by December 31, 1996, it will still have some work remaining, particularly in areas in which there are not yet industry standards. The GPSC appropriately recognized the complexities involved in this additional work in extending its deadline for an additional eight and one-half months from the original July 15, 1996 date to March 31, 1997. While BellSouth anticipates meeting the GPSC's revised date, many ILECs may not even be this far along. More importantly, the potential users of the interfaces at issue are still in the process of defining the specific technical requirements they desire. Moreover, they have not agreed among themselves, with BellSouth, or with the industry as a whole as to what is required. It is these very issues which those industry committees whose role is to develop industry standards related to operations support systems must and will resolve. Nevertheless, several of these standards-setting bodies have only just begun to address national standards for some required functions. For instance, the Ordering and

Billing Forum has only just begun to consider pre-ordering issues within the past two weeks. Given the nascent stage of the industry efforts, a deferral of the deadline is appropriate. Of course, this would not prevent ILECs which develop modified processes for nondiscriminatory access to Operations Support Systems at an earlier point in time from providing them to requesting carriers through the negotiations process as such capabilities become available. Indeed, some new entrants are currently using some of the interfaces BellSouth has already made available.

VI. REQUESTS FOR ADDITIONAL PERFORMANCE STANDARDS AND REPORTING REQUIREMENTS SHOULD BE DENIED.

None of the petitioners provides a basis for the Commission to impose additional performance standards or national reporting requirements. The Commission appropriately left to the negotiations process and state regulatory bodies any further development of standards if any are necessary.[10] Moreover, the necessity for any reporting requirements can be determined by the states also, as the Commission suggests.[11]

VII. THE REQUIREMENT THAT ILECS RELINQUISH RESERVED SPACE SHOULD BE RECONSIDERED.

As the LECC observes, certain of the Commission's determinations regarding rights and responsibilities of ILECs and competitors with regard to space in ILECs' offices should be reconsidered.[12] In particular, while the Order and the applicable rules adopted thereunder[13] on their face would appear to be an attempt to assure nondiscriminatory access to such space by both

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[10] Order at para. 310.

[11] Order at para. 311.

[12] LECC at 5-11.

[13] Order at paras. 586 and 604 and 47 C.F.R. Section 51.323(f)(4), (5) and (6).

ILECs and their competitors, the exact opposite is true. For instance, although the Commission indicates that ILECs may continue to reserve space for their future needs as long as competitors are provided the same opportunity,[14] ILECs are required to give up such reserved space if needed in order to meet requests for virtual collocation.[15] Although ILECs are not required to give up such space if it proves to the state commission "that virtual collocation at that point is not technically feasible," it is not clear that an ILEC's future needs for the space would render the relinquishment of space to meet the request for virtual collocation "technically infeasible." [16] Such future needs could be based upon a variety of factors, such as reasonable growth projections for a reasonable future period of time,[17] or, for instance, equipment which has been ordered but not installed whether for use as replacement equipment, upgraded technology and/or expansion of capacity. In contrast, competitors which have reserved space for their own future use do not have the same obligation to relinquish that space. An imbalance results in that such arrangements unfairly favor collocators over the ILECs other customers, whether end users, resellers, or other carriers. The Commission should revise its rules, as the LECC observes, so that ILECs may reserve space to meet the anticipated needs of all of their customers, and thus meet their universal service and carrier of last resort obligations.[18]

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[14] 47 C.F.R. Section 51.323(f)(4).

[15] 47 C.F.R. Section 51.323(f)(5).

[16] For instance, the Commission's rules provide that space or site concerns may not be considered in determining whether a request is technically feasible except " . . . where there is no possibility of expanding the space available." 47 C.F.R. Section 51.5 (definition of "technically feasible").

[17] In the Commission's expanded interconnection proceedings, the Commission had recognized a five-year planning period as a reasonable period of time for which a LEC could rightfully reserve space for its own needs. Expanded Interconnection with Local Telephone Company Facilities, Petitions for Exemption from Physical Collocation Requirement, Memorandum Opinion and Order, 8 FCC Rcd 4569 (1993) at para. 16 and n. 49.

[18] LECC at 10.

VIII. THE COMMISSION SHOULD REJECT THE PETITIONS OF NCTA AND MCI AS THEY RELATE TO UTILITY RIGHTS OF WAY, GRANT THE PETITIONS OF USTA, LECC AND THE ELECTRIC UTILITIES, AND REVISE ITS RULES TO RECOGNIZE THAT PARTIES MAY MUTUALLY NEGOTIATE THE TERMS AND CONDITIONS OF POLE ATTACHMENTS AGREEMENTS.

The Commission should reject the National Cable Television Association's ("NCTA") suggestion that the Commission require separate certification as a precondition to state regulation over access to poles.[19] NCTA claims that in the absence of certification, a complaining party "can only guess whether or not a state actually regulates access before deciding whether to file the complaint at the FCC or with the state commission."[20] In reality, a complaining party, or its counsel, is perfectly capable of ascertaining in the first instance whether or not a state commission has exercised its preemptive authority under section 224(c)(1).[21] The Commission has already provided a procedural check by requiring a state or a defending party that has been properly served by a complaint under section 1.1404(c) of the Commission's Rules to come forward to apprise the Commission whether the state is regulating such matters.[22]

What NCTA really advocates is a presumption that states are not adequately regulating access to poles.[23] The Commission should not assume, in the first instance, that the states are incapable of getting the access issue right. The Commission should not become further embroiled in imposing additional and unnecessary regulatory hoops for states to jump through. Such an

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[19] National Cable Television Association ("NCTA") Petition at 20-23.

[20] Id. at 21.

[21] Under NCTA's proposal, a complaining party would have to undertake some diligence anyway to ascertain whether or not a state has filed certification with the FCC.

[22] Order at para. 1240.

[23] NCTA Petition at 22-23 ("Even though some states may actually have rules regulating access to poles, those rules may not be in conformity with the strong presumption in favor of access mandated by Federal law.")

approach is contrary to the federal/state partnership that the FCC has advocated as necessary to implement the new Act in as efficient a manner as possible. NCTA's hypothetical conjuring of confusion is insufficient to cause the Commission to set aside its determination regarding state supervision of access issues.[24]

The Commission should also reject MCI's assertion that the "the future revenues a utility may earn as a result of modification of costs associated with a new entrant's request for access to its rights of way" compel further government intervention in the form of the development of complicated "rebate mechanisms" or averaged incremental cost pricing for pole or conduit modification.[25] MCI would have the Commission nationalize LEC and electric utility infrastructure. MCI concedes that the Commission has already considered and rejected the argument that the 1996 Act grants an ownership interest in utility facilities or the revenues generated from those facilities:

> We recognize that in some cases a facility modification will create excess capacity that eventually becomes a source of revenue for the facility owner, even though the owner did not share in the costs of the modification. We do not believe that this requires the owner to use those revenues to compensate the parties that did pay for the modification. Section 224(h) limits responsibility for modification costs to any party that "adds to or modifies its existing attachment after receiving notice" of a proposed modification. **The statute does not give that party any interest in the pole or conduit other than access. Creating a right for that party to share in future revenues from the modification would be tantamount to bestowing an interest that the statute withholds. Requiring an owner to offset modification costs by the amount of future revenues emanating from the modification expands the category of responsible parties based on factors that Congress did not identify as relevant. Since Congress did not provide for an offset, we will not impose it ourselves.** Indeed, a requirement that utilities pass additional attachment fees back to parties with preexisting attachments may be a disincentive to add new competitors to modified facilities, in direct contravention of the general intent of Congress.[26]

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[24] See n. 22 supra.

[25] MCI Petition at 33-35.

[26] Order at para. 1216 (emphasis added, footnotes omitted).

MCI has added nothing new to the record that warrants any reconsideration of the Commission's considered determination. Accordingly, the Commission should reject MCI's request for a federal right to force utilities to undertake modifications upon request and to allocate the costs of such modifications beyond the party for whose benefit the modification is made.

BellSouth supports in general the Petitions filed by USTA, the LECC, Infrastructure Owners,[27] Florida Power & Light Company, Consolidated Edison Company of New York, Inc., Pacific Gas and Electric Company, and Carolina Power and Light Company with respect to issues related to access to rights of way. These petitions uniformly demonstrate the practical problems that ensue when government attempts to micromanage the details of private contractual relationships within the context of the utility infrastructure. It is unnecessary for the Commission to build a complicated set of "one size fits all" rules to govern every conceivable pole and conduit attachment arrangement in this country.

BellSouth agrees with the LECC that the aspects of the Order that relate to poles, conduits and rights of way create competitive distortions and imbalances.[28] Specifically, BellSouth agrees that the Commission should reconsider its decision that ILECs are barred from reserving attachment space for their future use. Such a determination is tantamount to "bestowing an interest on parties that the statute withholds."[29] In addition to the arguments advanced by the LECC,[30] ILECs have additional, practical needs. In the states in which BellSouth

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[27] The "Infrastructure Owners" are American Electric Poser Service Corporation, Commonwealth Edison Company, Duke Power Company, Entergy Services, Inc., Northern States Power Company, The Southern Company and Wisconsin Electric Power Company.

[28] LECC Petition at 22-24.

[29] See n.8 supra.

[30] LECC Petition at 22-23.

is authorized to provide local exchange service and exchange access service, BellSouth's telephone cable plant is deployed on infrastructure owned mainly by electric utilities. On average, 70% - 80% of the poles on which BellSouth attaches are owned by electric utilities; BellSouth actually owns the minority of utility poles in its region. Yet, under the 1996 Act, ILECs are expressly excluded from the definition of "telecommunications carrier" for the purposes of receiving any of the benefits of the Pole Attachments Act.[31] ILECs like BellSouth, unlike any other telecommunications carriers (including electric utilities who are also telecommunications carriers), are victims of a severe competitive imbalance that more than offsets any competitive concern that the Commission may have with respect to the issue of ILECs reserving space.

BellSouth has historically negotiated rates for attaching to electric utility poles based upon mutually agreed upon space allocations across "joint use" poles. These rates are based upon a certain amount of space reserved by both parties to joint use agreements, typically between 1-3 feet. The Commission's determination that ILECs are precluded from reserving space for their own future use jeopardizes existing contracts, as well as the ILECs' ability to negotiate favorable rates with electric utilities. In BellSouth's experience, the rates it negotiates with electric utilities for pole attachments are many times higher than the rates it charges cable television operators in the same location. This competitive imbalance can only be aggravated by the Commission's insistence that ILECs are precluded from reserving space on their own facilities for legitimate future growth needs. The Commission should therefore allow ILECs to reserve space on their own poles and within their own conduit, as well as on poles and conduit owned by electric utilities

[31] 47 U.S.C. Section 224(a)(5).

pursuant to joint use agreements, in order to accommodate a standard industry five year construction planning cycle.

BellSouth also agrees with the LECC,[32] Consolidated Edison,[33] and Carolina Power and Light[34] that the Commission does not have the jurisdiction to order utilities to exercise eminent domain rights on behalf of third parties. The legality of such conduct is, in the first instance, a matter of state law. It may well be that all locally certificated telecommunications carriers are granted the same eminent domain rights as incumbent utilities. The Commission should not mandate such a requirement in the complete absence in the record that such extraordinary bootstrapping is necessary.

The competitive imbalances created by Section 224 affect utilities who are ILECs more severely than utilities who provide electricity. Nevertheless, BellSouth agrees with each of the arguments advanced by the electric utility companies in their petitions regarding access to rights of way. These arguments are just as persuasive when applied to utilities who are incumbent providers of local exchange service and exchange access service, and the legal foundation for the arguments is identical. BellSouth agrees with the Infrastructure Owners that Congress intended for utilities and requesting parties to voluntarily enter into binding, contractual agreements.[35] Thus parties should be able to negotiate such issues as notice requirements for any number of events that may arise in the context of a pole attachment relationship.

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[32] LECC Petition at 23-24.

[33] Consolidated Edison Petition at 5-6.

[34] Carolina Power and Light Petition at 18.

[35] Infrastructure Owners Petition at 34-37.

In this regard, the Commission should revise its modification to Section 1.1403(c) of its rules to reflect its determination at paragraph 1209 of the Order that the 60-day notification requirement for routine modifications is only required where the parties have not otherwise entered into a private agreement establishing notification procedures:

> A utility shall provide a cable television system operator or telecommunications carrier no less than 60 days written notice prior to: (1) removal of facilities or termination of any service to those facilities, such as removal or termination arising out of a rate, term or condition of the cable television system operator's or telecommunications carrier's pole attachment agreement, or (2) any increase in pole attachment rates; or (3) ***unless otherwise agreed to by the parties to the pole attachment agreement,*** any modification of facilities other than routine maintenance or modification in response to emergencies.[36]

IX. CONCLUSION

In sum, BellSouth generally supports the Consolidated Opposition being filed by USTA contemporaneously herewith. BellSouth has addressed herein issues which either bear further emphasis or call for additional discussion. Above all, it is of particular concern to BellSouth that the Commission not use this proceeding to further interfere with matters intended by the Act to be dealt with through private negotiations and state regulatory proceedings. Rather,

[36] Order at B-2 - B-3 (BellSouth's proposed revision emphasized).

any modifications made to the Order should be taken with the view and recognition that the Commission's role in implementing Sections 251 and 252 of the Act is a substantially limited one.

Respectfully submitted,

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(CC Docket No. 96-98)

I hereby certify that I have this 31st day of October, 1996 served the following party to this action with a copy of the foregoing BELLSOUTH OPPOSITION AND COMMENTS by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties on the attached service list.

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